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**From:**

**Sent:** Tuesday, October 26, 2010 10:32:58 AM

**To:**

**Cc:**

**Subject:** Forfeiture/restitution issue

Hi

Sorry for the delay in getting this email out. You asked about a situation in which the Service has filed a federal tax lien against the property of a taxpayer who was convicted in an unrelated criminal case. As part of that criminal case, the district court issued both an Order of Restitution and an Order of Forfeiture. These orders were filed after the taxes were assessed but before the Notice of Federal Tax Lien was filed. No seizures have been made under the forfeiture order as of this time. The Revenue Officer assigned to the case has asked whether she can pursue collection based on the tax lien.

We advise that it would be inappropriate to pursue collection against any assets that are subject to the forfeiture order. The order states that the indictment against the taxpayer included forfeiture allegations under 18 U.S.C. 981(a)(1)(C) and 18 U.S.C. 982. Both of these forfeiture statutes ultimately provide that title to the forfeited property vests in the United States as of the date the act giving rise to the forfeiture was committed. First, under 18 U.S.C. 981(f), "[a]ll right, title and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to the forfeiture under this section." Second, 18 U.S.C. 982 states that forfeiture of property under that section shall be governed by 21 U.S.C. 853, which contains the same vesting language as 18 USC 981(f) at subsection (c). This principle of vesting on the date the act committed is known as "relation back." Although the United States has no authority to seize forfeited property without a final order of forfeiture, once that order is entered, the forfeiture relates back to the criminal act that gave rise to the forfeiture. See, e.g., Caplin & Drysdale v. United States, 491 U.S. 617, 628 (1989); McCorkle v. Commissioner, 124 T.C. 56, 65-66 (2005).

In this case, there is a final forfeiture order, and the acts giving rise to the forfeiture occurred before the taxes were assessed. Thus, at the time the tax lien arose, the taxpayer did not have any right, title and interest in the property covered by the final forfeiture order, and the tax lien did not attach to that property under IRC 6321. In addition, because it is property of the U.S. and not property of the taxpayer, the forfeited assets are not subject to levy under IRC 6330. However, it may be possible to collect against other assets of the taxpayer. [REDACTED]

If you have any further questions, please give me a call.

Thanks,

